IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 8 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MATADIN SEDHURAM VARMA

Versus

MAFAJI KALUJI

Appearance:

1. First Appeal No. 8 of 1986

MR KH BAXI for appellant No. 1

MR BP TANNA for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 25/03/2004

ORAL JUDGEMENT

1. The appellant-original claimant by filing this appeal under Section 110-D of the Motor Vehicles Act, 1939 (to be referred to as "the Act") has challenged the

judgment and award dated November 19,1987, of the Motor Accident Claim Tribunal No.IV (Main), Ahmedabad City, passed in M.A.C.Application No.204 of 1983, by which the claim application filed by the appellant claiming compensation of Rs.80,000/- from the respondents came to be dismissed.

2. According to the appellant on March 7, 1983, he had boarded A.M.T.S.Bus bearing Body No.698, Route No.90/6 from the bus stand of Subhash Bridge Circle and was proceeding towards his residence, situated at Sabarmati Tolnaka. It is the case of the appellant that the said bus was driven rashly and negligently by the respondent No.1-driver and the bus did not stop at some of the bus stops. It was pleaded that the bus even did not stop at Sabarmati Tolnaka and was stopped at a distance from the bus stand and the conductor of the bus had instructed the passengers to get down on that place. As per the case of the appellant, when he was getting down of the bus, the respondent No.1- driver had started the bus with speed as a result of which the appellant was thrown on the ground and had sustained injuries on both the wrists. Due to the injuries sustained by the appellant, he had taken treatment on the next day and had remained bed ridden for substantial period. As per Dr. Bhatt, due to the injuries sustained in the vehicular accident, there was a residual disability of right wrist at 14 % and that of left wrist at 12 % for the body as a whole, as per the method prescribed by Dr. Kesslar. The appellant, therefore, filed claim application under Section 110 A of the Act in the Motor Accident Claims Tribunal, Ahmedabad City, claiming compensation of Rs.80,000/- from the respondents.

3. The said application was resisted by the respondents by filing their written reply, inter-alia contending that the respondent No.1-driver had not driven the bus in a rash and negligent manner and no accident as described by the appellant had taken place at the place called Sabarmati Tolnaka. The respondent No.2-Ahmedabad Municipal Transport Service also contended that the driver of the bus had not reported the occurrence of the accident to his higher officials and the factum of the accident was therefore, not admitted.

4. On the basis of abovereferredto rival pleadings of the parties, the Tribunal has raised issues at Exh.22. The appellant in support of his case has examined himself at Exh.23 and had produced documentary evidence consisting of complaint lodged by him before the Court of Metropolitan Magistrate, dated May 7, 1983, at Exh.24,

panchnama of the place of the incident, at Exh.25, injury certificate at Exh.26, disability certificate at Exh.37, salary certificate at Exh.27 and the bills/vouchers in all 19 collectively at Exh.29. On behalf of the respondents, the respondent No.1-driver of the bus alleged to have been involved in the accident was examined at Exh.38. The judgment of the Criminal Court wherein the driver was acquitted was produced at Exh.39.

5. On the appreciation of oral as well as documentary evidence, the Tribunal had concluded that it was not proved by the appellant that he had sustained injuries in the vehicular accident due to rash and negligent driving of the bus, driven by the respondent No.1. It was further held that it was proved by the respondent No.2 that the alleged bus bearing Body No.698 was not involved in the accident and therefore, they were not liable to answer the claim of the appellant. Though the Tribunal had assessed the total compensation to which the appellant could have been entitled to Rs.36,335/-, but in view of the finding that the bus belonging to respondent No.1 was not involved in the accident, it was held that the appellant was not entitled to claim compensation from the respondents. On the basis of abovereferred to conclusions and findings, the Tribunal dismissed the application filed by the appellant claiming compensation from the respondents, which has given rise to filing of this appeal.

6. Learned counsel for the appellant Mr. K.H.Bakshi has taken me through the entire record and proceeding of M.A.C.Application No.204 of 1983. Counsel for the appellant has vehemently submitted that the appellant had taken treatment on the very next day of the occurrence of the accident which was proved by the injury certificate and the disability certificate of Dr. Bhatt. It is further submitted that the delay in lodging F.I.R. would not destroy the case of the appellant for claiming compensation against the respondents. On the other hand, learned Senior Advocate for the respondents Mr. B.P.TANNA has vehemently submitted that the appellant had miserably failed to prove that he had sustained injuries in the vehicular accident due to rash and negligent driving by the respondent No.1 in driving the alleged bus on the day of the accident. Learned Senior Advocate further submitted that no cogent and reliable evidence was led by the appellant to prove that he had sustained injuries in the vehicular accident due to rash and negligent driving by the respondent No.1 in driving the bus belonging to respondent No.2 and therefore, the appeal deserves to be dismissed.

7. I have carefully considered the entire evidence led before the Tribunal and the submissions advanced by the learned counsel for the parties. The appellant was serving as a Police Head-Constable and was posted at Ellis Bridge Police Station at the time of accident. It is difficult to believe that on the assurance of the respondent No.1-driver, he did not file the complaint before the Police Station or in the Court of Metropolitan Magistrate with regard to the occurrence of the accident. The complaint Exh.24 was filed by the appellant nearly after two months of the accident. It is surprising to note that the complaint was lodged after two months in the Court of Metropolitan Magistrate. The certified copy of the judgment and order of Criminal Case No.951 of 1983, which was filed pursuant to the complaint lodged by the appellant also indicates that the involvement of the bus in question was not established by the appellant-complainant. When the involvement of the bus in question was not proved by the appellant in the so-called accident wherein he had sustained injuries, learned Tribunal was justified in rejecting the application for compensation filed by the appellant.

8. The assessment made by the Tribunal on different heads was quite reasonable and just, but in absence of involvement of the bus and in absence of rash and negligent driving by the respondent No.1, no compensation could have been awarded in favour of the appellant for the alleged vehicular accident sustained by him. The said finding, in my view, cannot be said to be illegal or perverse, but is based on proper appreciation of evidence. Therefore, in my view, the judgment and order passed by the Tribunal rejecting the claim application of the appellant is legal and justified and no interference is called for of this Court.

9. As a result of the foregoing discussion, the appeal being meritless is dismissed with no order as to costs.

(M.H.Kadri, J.)

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